

No. 12519

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United States  
Court of Appeals  
For the Ninth Circuit.

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TIGHE E. WOODS, Housing Expediter, Office of  
the Housing Expediter,

Appellant,

vs.

ROSE SANFORD and EDNA FORGEY,

Appellees.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Oregon

FILED

JUN 16 1950

PAUL P. O'BRIEN, -



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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer .....	6
Clerk's Certificate .....	15
Complaint for Injunction and Restitution....	2
Exhibit A—Statement of Violations and Overcharges .....	5
Designation of Record on Appeal.....	13
Findings of Fact and Conclusions of Law....	7
Judgment .....	11
Memorandum of Decision.....	14
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	12
Statement of Points on Which Appellant In- tends to Rely.....	14



NAMES AND ADDRESSES OF ATTORNEYS

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ROY C. FOX,

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Attorneys for Plaintiff.

LEROY L. LOMAX,

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Attorney for Defendant.

In the District Court of the United States  
For the District of Oregon

No. Civ. 4365

TIGHE E. WOODS, Housing Expediter, OFFICE  
OF THE HOUSING EXPEDITER,  
Plaintiff,

vs.

ROSE SANFORD and EDNA FORGEY,  
Defendants.

COMPLAINT FOR INJUNCTION  
AND RESTITUTION

Comes Now Plaintiff above named and alleges:

I.

That plaintiff is the duly appointed and qualified Housing Expediter, Office of the Housing Expediter, an agency of the United States government, created by the Veterans' Emergency Housing Act of 1946 as amended, (50 U.S.C.A. App. Sec. 1821 et seq.) and brings this action as such Housing Expediter pursuant to the Housing and Rent Act of 1947 (50 U.S.C.A. App. Sec. 1881-1902) as extended and amended by Public laws 422 and 464 of the 80th Congress, hereinafter referred to as the Act.

II.

That jurisdiction of this action is vested in the above-entitled Court under Sec. 206(b) of the Act.



III.

That at all times herein mentioned, Rose Sanford has been the landlord and operator of the controlled housing accommodation situated at 1825 S.W. 3rd Avenue, Portland, Oregon, within the Portland-Vancouver Defense-Rental Area; and that Edna Forgey is the Manager and agent of the said Rose Sanford, and manages said apartment as such.

IV.

That in the opinion of the Expediter, defendants have violated and are violating the provisions of the Housing and Rent Act of 1947, as amended, and the regulations issued pursuant thereto, in that they have demanded, received and collected, and are demanding, collecting and receiving from tenants occupying said accommodations, rentals in excess of the Maximum Legal Rentals fixed and established by law for such accommodations.

V.

That a detailed statement of said violations and overcharges showing the number of the apartment, name of the tenant, period of occupancy, maximum legal rent, the amount charged, and total overcharges as to each tenant are set forth in Exhibit "A" attached hereto, which said Exhibit "A" is by reference made a part of this paragraph and Complaint as fully as though set forth in detail herein.

Wherefore Plaintiff prays:

1. For a temporary and permanent injunction, restraining and enjoining the defendant, Rose San-

ford, her agents, employees, servants and associates, or anyone acting for or on her behalf, from demanding, collecting, receiving or retaining rentals for any of the housing accommodations situated at 1825 S.W. 3rd Avenue, Portland, Oregon, in excess of the Maximum Legal Rentals fixed and established by law; or from otherwise or in any manner violating the provisions of the Housing and Rent Act of 1947, as amended, and the regulations issued pursuant thereto.

2. For an Order of Restitution, requiring and directing the defendant, Rose Sanford, to refund and repay to each of the tenants named, the total amount set forth opposite each name in Exhibit "A" of this Complaint.

3. Plaintiff further prays for his costs and disbursements herein.

Dated at Seattle, Washington, this 9th day of February, 1949.

/s/ C. E. KNOWLTON, JR.,

/s/ ROY C. FOX,

Attorneys for Plaintiff.

/s/ FLOYD W. HAMILTON,

Assistant U. S. Attorney.

/s/ N. RAY ALBER.

EXHIBIT "A"

Landlord: Rose Sanford		Premises: 1825 S.W. 3rd Avenue, Portland, Oregon				
Apt. No.	Tenant	Period of Occupancy	Amt. Chgd. (Per Mo.)	MLR	O.C.	Total O.C.
1	Mrs. Tillie Garrison	12/ 4/48 to 2/ 3/49 (2)	\$40.00	\$27.50	\$12.50	\$25.00
2	Orie Couture	12/12/48 to 12/27/48 (1/2)	45.00	35.00	10.00	5.00
9	Orie Couture	12/27/48 to 1/10/49 (1/2)	45.00	40.00	5.00	2.50
3	LaVerne M. Hoyt	12/31/48 to 1/31/49 (1)	35.00	30.00	5.00	5.00
		1/ 4/49 cleaning deposit paid.....				5.00
8	Eugene Kilgore	3/ 4/48 to 2/ 4/49 (11)	40.00	27.50	12.50	137.50
		3/ 5/48 paid cleaning deposit.....				5.00
9	Frank S. Callopy	9/ 7/47 to 10/ 6/48 (13)	50.00	40.00	10.00	130.00
12	Mrs. Eve Palmer	2/ 1/48 to 1/31/49 (12)	30.00	20.00	10.00	120.00
					Total.....	\$435.00

Duly verified.

[Endorsed]: Filed Feb. 10, 1949.

[Title of District Court and Cause.]

ANSWER

Comes now the defendants herein and in answer to the plaintiff's complaint in the cause, admit, deny and allege as follows:

I.

That defendants have no knowledge sufficient to form a belief as to the truth of paragraph I of plaintiff's complaint so therefore defendants deny the said allegation and the whole thereof.

II.

Defendants admit paragraph II of Plaintiff's complaint.

III.

Defendants admit paragraph III of Plaintiff's complaint.

IV.

Defendants deny paragraphs IV and V of Plaintiff's complaint and each and every part and the whole thereof.

Wherefore, defendants having fully answered the plaintiff's complaint, pray that the same be dismissed and that defendants have judgment and decree for their costs and disbursements incurred herein.

/s/ LEROY L. LOMAX,

Attorney for Defendants.

Duly verified.

Receipt of Copy Acknowledged.

[Endorsed]: Filed Mar. 2, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter was first heard by the Court sitting without a jury on May 16, 1949, on plaintiff's motion for summary judgment, Roy C. Fox, attorney of record appearing for plaintiff, and defendants appearing by their attorney, Leroy L. Lomax, and after hearing the arguments of counsel, the Court reserved decision on said motion and the case was set for trial May 24, 1949, at which date and time plaintiff appeared by his attorney, Roy C. Fox, defendants appearing in person and by their attorney, Leroy L. Lomax and the testimony of witnesses and documentary evidence having been introduced, the Court again reserved its decision.

That thereafter on June 13, 1949, the Court made an Order that an injunction will issue and restitution be denied for the reasons stated in Civil Action No. 4366, Woods vs. Brown; that thereafter on or about the 29th day of July, 1949, plaintiff filed a motion to reconsider said opinion and order which said motion was denied by oral order of the Court on November 25, 1949.

The Court having considered all preliminary matters and the testimony adduced on the trial of said action on May 24, 1949, and being fully advised in the premises, now makes the following

## Findings of Fact

## I.

That plaintiff is the duly appointed and qualified Housing Expediter of the Office of the Housing Expediter, an agency of the United States Government created by the Veterans Emergency Housing Act of 1946 as amended and brings this action pursuant to the Housing and Rent Act of 1947 as amended.

## II.

That jurisdiction of this action is conferred upon this Court by Section 206(b) of the Act.

## III.

That from and including the 7th day of September, 1947, to the 31st day of January, 1949, the defendant, Rose Sanford, has been the landlord and operator of the certain controlled housing accommodation situated at 1825 S.W. 3rd Avenue, Portland, Oregon, within the Portland-Vancouver Defense-Rental Area, and that Edna Forgey was, during all of said period, the manager and agent of the said Rose Sanford and managed and operated said apartment as such.

## IV.

That Frank S. Callopy occupied Apt. 9 of the accommodations situated at 1825 S.W. 3rd Avenue, Portland, Oregon, as a tenant from the 7th day of September, 1947, to the 6th day of October, 1948; that during each and every month of said period, the defendants collected and received from the said

tenant for the use and occupancy of said accommodation, rentals in the amount of \$50.00 per month; that the Maximum Legal Rent established for said accommodation during all of said period was the sum of \$40.00 per month, constituting an overcharge to said tenant in the amount of \$10.00 per month for a total overcharge for the period in the amount of \$130.00.

V.

That Apt. 12 of the above-described accommodations was occupied by Mrs. Eva Palmer as a tenant from the 1st day of February, 1948, to the 31st day of January, 1949; that during each and every month of said period, the defendants collected and received from said tenant for the use and occupancy of said accommodation, rentals in the amount of \$30.00 per month; that the Maximum Legal Rent established by law for said accommodation was the sum of \$20.00 per month, constituting an overcharge of \$10.00 per month for a total overcharge of \$120.00.

VI.

That plaintiff submitted no testimony as to overcharges of any other tenants alleged in the Complaint, from which Findings of Fact, the Court makes the following

Conclusions of Law

I.

That plaintiff's prayer for an Order of Restitution be denied for the reason that the granting of

restitution would constitute imprisonment for debt.

II.

That plaintiff is entitled to a permanent injunction restraining the defendants and each of them from collecting, demanding or receiving, rentals in excess of the Maximum Legal Rentals established by law for Apts. 9 and 12 in the premises situated at 1825 S.W. 3rd Avenue, Portland, Oregon.

Done In Open Court this 18th day of February, 1950.

/s/ CLAUDE McCOLLOCH,  
U. S. District Judge.

Presented by:

/s/ ROY C. FOX,  
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 18, 1950.



In the District Court of the United States  
for the District of Oregon

No. 4365

TIGHE E. WOODS, Housing Expediter, OFFICE  
OF THE HOUSING EXPEDITER,  
Plaintiff,

vs.

ROSE SANFORD and EDNA FORGEY,  
Defendants.

### JUDGMENT

This matter was tried before the Court without a jury on the 24th day of May, 1949, plaintiff appearing by his attorney of record, Roy C. Fox, defendants appearing in person and by their attorney, Leroy L. Lomax, and the testimony of witness and documentary evidence having been received, and the Court having made and entered herein its Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that plaintiff's prayer for restitution be and is hereby denied.

It Is Further Ordered that the defendants, Rose Sanford and Edna Forgey, and each of them be and are hereby permanently enjoined and restrained from demanding, collecting or receiving from tenants occupying Apts. 9 and 12 of the accommodations situated at 1825 S.W. 3rd Avenue, Portland, Oregon, rentals in excess of the Maximum Legal

Rentals established by law for such accommodations.

It Is Further Ordered that no costs be assessed.

Done In Open Court this 18th day of February,  
1950.

/s/ CLAUDE McCOLLOCH,  
U. S. District Judge.

Presented by:

/s/ ROY C. FOX,  
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 18, 1950.

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice is hereby given that Tighe E. Woods, Housing Expediter, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on the 18th day of February, 1950.

/s/ ROY C. FOX,  
Attorney for Plaintiff.

Service accepted.

[Endorsed]: Filed Mar. 29, 1950.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Appellant designates the following portions of the record and proceedings to be contained in the record on appeal in this action:

- (1) Complaint.
- (2) Defendants' Answer to Complaint.
- (3) Memorandum of Decision June 13th, 1949.
- (4) Findings of Fact and Conclusions of Law prepared by plaintiff, filed February 18, 1950.
- (5) Judgment.
- (6) Notice of Appeal.
- (7) Statement of Points on Which Appellant intends to Rely.
- (8) Memorandum of decision in the case of Woods v. Brown, Civil Action No. 4366.
- (9) This Designation.

/s/ ROY C. FOX,

Attorney for Plaintiff.

Service accepted.

[Endorsed]: Filed Mar. 29, 1950.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

The point upon which appellant intends to rely on this appeal is as follows:

(1) The Court erred in denying plaintiff's prayer for restitution of rental overcharges in the above-entitled case.

/s/ ROY C. FOX,  
Attorney for Plaintiff.

Service accepted.

[Endorsed]: Filed Mar. 29, 1950.

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In the District Court of the United States  
for the District of Oregon

Civil No. 4366

TIGHE E. WOODS, Housing Expediter, OFFICE  
OF THE HOUSING EXPEDITER,  
Plaintiff,

vs.

JOHN S. BROWN,

Defendant.

MEMORANDUM OF DECISION

This case prays for "restitution" of \$70.20 to one tenant, \$212.30 to another, and for an injunction.

At the argument I asked able counsel for the Expediter a question that has been in my mind for

some time. I asked him how the Expediter intended to enforce orders for "restitution," whether by execution, as on the usual money judgment, or by invoking the court's contempt power. He answered the latter. Since I consider this would be imprisonment for debt, which I abhor, the order for restitution is denied.

The defendant has sold the premises, so an injunction to control defendant's future conduct is not needed. Some time ago I denied an injunction for the same reason in a Wages and Hours case. There the defendant had sold his sawmill. And see a decision in one of the recent advance sheets by Honorable John E. Miller, one of the United States District Judges for Arkansas.

Judgment for defendant for the reasons stated.

Dated June 15, 1949.

/s/ CLAUDE McCOLLOCH,  
U. S. District Judge.

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CLERK'S CERTIFICATE

United States of America,  
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint for injunction and restitution, Answer, Findings of fact and conclusions of law, Judgment, Notice of appeal, Designation of record on appeal,

Statement of points on which appellant intends to rely, Transcript of docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 4365, in which Tighe E. Woods, Housing Expediter, is plaintiff and appellant and Rose Sanford and Edna Forgey are defendants and appellees; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 7th day of April, 1950.

LOWELL MUNDORFF,  
Clerk.

[Seal] By /s/ F. L. BUCK,  
Chief Deputy.

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[Endorsed]: No. 12519. United States Court of Appeals for the Ninth Circuit. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, vs. Rose Sanford and Edna Forgey, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed April 10, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.